Supreme Court, U.S.
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OFFICE OF THE CLERK

No.

IN THE

SUPREME COURT OF THE UNITED STATES

CEFERINA GAYO HESS,

Petitioner

v.

LANDER UNIVERSITY, *et al.*,

Respondents

On Petition For Writ of Certiorari
To The United States Court of Appeals
For the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the United States Court of Appeals for the Fourth Circuit, in affirming the decision of the United States District Court of South Carolina, Anderson County, is complicit in rendering a judgment extremely tainted with serious errors of law and procedure;

2. Whether the Fourth Circuit Appellate Court and the U.S. District Court have abused their discretion or has so far departed from the accepted and usual course of judicial proceedings so as to call for an exercise of this Court's supervisory power;

3. Whether both Courts have ignored an important question of federal law that has not been, but should be, settled by this Court for reasons of public interest and public policy; and

4. Whether the Court of Appeals' decision creates a direct conflict with decisions of this Court and decisions of other courts of appeals.

COMPLETE LIST OF RESPONDENTS, PARTIES TO THE PROCEEDINGS IN THIS COURT

Lander University President:

1. Dr. Daniel W. Ball

Lander University Board of Trustees:

2. Mrs. Robin R. Agnew
3. Mrs. Ann B. Bowen
4. Mr. Bobby M. Bowers
5. Dr. C. Tyrone Gilmore
6. Mr. Finis E. Horne
7. Mr. Maurice Holloway
8. Mr. Raymond D. Hunt
9. Mr. J. Thomas Kinard
10. Dr. Glenn J. Lawhon, Jr.
11. Mrs. Mamie W. Nicholson
12. Mr. Anthony Noury
13. Dr. Sally E. Self
14. Mr. George R. Starnes, Chair
15. Mr. Fred M. Thrailkill
16. Mrs. S. Anne Walker
17. Ms. Ricci Land Welch
18. Mr. M. Craig White

Other Respondents:

19. Prof. Susan C. Going
20. Dr. Larry A. Jackson
21. Dr. William T. Martin
22. Dr. Timothy L. Snyder
23. Dr. Aron G. Tannenbaum
24. Dr. Friederike Wiedemann

Attorney of Record for All 24 Respondents:

Vance J. Bettis, Esq.
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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR A WRIT OF CERTIORARI

Petitioner *Pro Se*, Ceferina Gayo Hess, respectfully petitions for a writ of certiorari to review the judgment of the United States Court Appeals for the Fourth District affirming the judgment of the United States District Court of South Carolina in this case.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit dated November 14, 2006 and October 19, 2006 appears at Appendix A and Appendix B to the petition and has been designated asUnpublished *Per Curiam*.

The opinion of the United States District Court Issued by Judge G. Ross Anderson, Jr. on February 17, 2006 appears on Appendix C while the Report & Recommendation of Magistrate Judge William Catoe, Jr. dated January 24, 2006 which formed the basis for such a decision appears on Appendix D hereof [Order filed 2/17/06 (Docket entry #65)].

JURISDICTION

The date on which the United States Court of Appeals decided my case was October 19, 2006. The November 14,

2006 letter from the Clerk of Court simply reaffirmed that Decision in response to Petitioner's Motion for Reconsideration filed on November 2, 2006.

The jurisdiction of this Court is invoked under 28 U.S.C. § 2101(e).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the applicability of Section 1, Amendment 14 of the United States Constitution relative to the Denial of Due Process and Equal Protection of the Laws (42 U.S.C. § 1983 and 42 U.S.C. § 1985(3) and Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq*. Also involved is the Federal False Claims Act, 31 U.S.C. §§ 3729-3733.

STATEMENT OF THE CASE

This started as a 10-charge case of Petitioner Dr. Ceferina Gayo Hess (henceforth known as Petitioner Hess) against Lander University and persons, in one way or another, connected with it during her more than 27 years of outstanding service to it as an institution known as Lander College between May of 1975 and June 30, 1992 and as Lander University (henceforth known as the University) from July 1, 1992 to the present day in January of 2007.

Her dismissal, finalized on December 13, 2002, was the result of a unanimous vote of 17-0 by the University's Board of trustees each of whom has been named by the Petitioner as a Respondent in this case because there is probable cause evidence from the May 25, 2005 deposition of the University's President Daniel W. Ball that each of them

had violated the Plaintiff's due process contractual protections by pre-judgment prior to receiving the Petitioner's appeal of her official dismissal from the University on October 17, 2002 by letter from Respondent President Ball signed by him in his official capacity as the President of Lander University. In that same May 25, 2005 deposition, he openly admitted not bothering to see over 400 pages of testimony and proceedings from the September 27, 2002 hearing conducted on the University by a 3-colleague committee of then current University faculty members brought together to determine a recommendation to Respondent President Ball as to whether or not the Petitioner's contract should be continued by the University.

Their unanimous recommendation that she be dismissed with cause was received by him on October 15, 2002, along with a 424-page transcript of the September 27, 2002 hearing. Respondent President Ball then freely admitted in his sworn May 25, 2005 deposition that he had immediately decided at that time (October 15, 2002) to dismiss the Petitioner because that Committee of her Peers had concurred with his own decision to dismiss her with cause made officially by hand-presented letter on May 3, 2002. Such rapidity was not required on Respondent President Ball's part because the 1999 Lander University Faculty Handbook had given him 30 days from point of receipt of that transcript and their decision to make his own determination of the future with Lander. He also admitted in that same deposition to "knowing" that the University's 17-member Board of Trustees had already agreed, as a body, to dismiss her, thus violating their due process responsibility to her as a final Appellate Body. No specific charges strong enough to warrant her dismissal were made against her pursuant to Section IV of the 1999 Lander University Faculty Handbook. More importantly, Petitioner's

two chairs (Respondent Timothy Snyder and William Martin) gave her an overall unsatisfactory performance rating for two successive years (2000-2002) which runs counter to her majority student evaluation records for those years. The same was validated by Respondent Dean Friederike Wiedemann. These ratings did not adhere to the policies mandated by the Division of History and Political Science regarding Criteria for Performance in 4 areas, namely Teaching, Professional Development, Community Service, and Advising. Incidentally, Respondent Dean Wiedemann previously had given Petitioner Dr. Hess an outstanding/ excellent Seven-Year Review covering the years 1989 to 1996.

During the termination proceedings, from June to September, 2002, Respondent President Ball refused 5 times to remove Dr. Kenneth Sanders as chair of the Respondent's Termination Hearing Committee. He left for a new job as Assistant Dean at New Jersey University in Jersey City, New Jersey four days after he signed the termination decision against Petitioner Dr. Hess. Also, two weeks after Respondent Dean Wiedemann made her decision to fire Petitioner Dr. Hess, she accepted a new job as Vice President for Academic Affairs (now as Provost) at Midwestern State University in Wichita Falls, Texas.

On the very same day that Petitioner's appeal was heard by the six members of the Lander University Board of Trustees (December 13, 2002), that Board hurriedly terminated her even though eleven other members were not brought together as a united Board for such a vote. According to the letter of dismissal, the decision was unanimous. Except for Mr. Craig White (Fuji Photo Film, Incorporated lawyer at that time), all five members of the Board of Trustees

Appeal Committee were graduates of Lander College/University and, more importantly, long-term supporters of Respondent former President Emeritus Dr. Larry A. Jackson. In this hearing as well as the Termination Hearing of September 27, 2002, Lander University was represented by 3 lawyers. The Respondent, however, did not have any attorney or counsel and only her husband, Dr. David L. Hess, assisted her in these two major proceedings.

Respondent President Ball, after 3 requests by letter from Petitioner Dr. Hess, refused to publicize her termination. He also refused to grant her any severance pay as is suggested by the American Association of University Professors (AAUP).

Prior to her wrongful termination procedure, Respondent President Ball had suspended the Petitioner on May 6, 2002 of all her professional responsibilities at the University including but not confined to teaching and advisement of students. In order to make such a suspension effective, Respondent President Ball first, in the name of the University, had to designate the Petitioner to be, according to the 1999 Lander University Faculty Handbook "an imminent threat to the University." The University and Respondent President Ball both have been unwilling, or to be more precise, unable since May 6, 2002 to show how or why the Petitioner can be considered an "imminent threat to anyone." Unsatisfactory teaching in and of itself does not reach the standard of being an imminent threat. The Petitioner has repeatedly inquired of Respondent President Ball that he elaborate on such an unsubstantiated ridiculous charge, but as of the present he has refused to do so.

The fact that Petitioner Dr. Hess was the first known-to-her tenured Lander faculty member ever suspended in the school's history of 130 years dating back to its founding in 1872 shows that the 1999 Lander University Faculty Handbook had to be taken literally on this "imminent threat" requirement for suspension. Also, Respondent President Ball categorically affirmed in his May 25, 2005 deposition that he would not recommend the Petitioner for a teaching position at any other institution, thus adding further weight to the Petitioner's assertion that the suspension and later (December 13, 2002) dismissal have crippled her chances for further employment in or outside of college or university teaching. Thus, as Petitioner is writing and typing this request for a writ of certiorari, 4 long years have elapsed with Petitioner not employed and remaining jobless.

In the summer of 2002, Respondent President Ball denied Petitioner Hess her freedom of speech on campus and she was not allowed to attend any faculty meetings nor was allowed access to campus mail facilities. She tried this once in April of 2004 only to have Respondent President Ball order the immediate confiscation of all her private envelopes containing "her side" of her suspension and dismissal.

Why was Petitioner Hess suspended and later fired from Lander University without warning? Petitioner strongly believes that it was largely because of her husband's (Dr. David L. Hess's) long-term, 11-year (1991-2002) campaign to whistleblow Respondent ex-President Larry A. Jackson's badly embellished professional credentials including but not confined to having allegedly been a "non-president of a college that didn't exist," meaning Santiago College, Santiago, Chile from 1959 to 1964. Between 1991 and the

year 2000, Petitioner's husband David always tried to place a "disclaimer" on all his letters attacking this Jackson cover-up. Ordinarily, Petitioner's husband would have stayed away from publicly exposing such an unprofessional college president, but when said Respondent is also using his power over students to petition and class-disrupt a trusting professor (Petitioner Hess) while over-riding a Lander College Tenure and Promotion Committee recommendation to promote her to full professorship (April, 1989), academic self-defense tactics sometimes require drastic action. It is not overly surprising that one of these said professor attackers is now, with Respondent Lander University ex-president Jackson's probable support, the President of Lander University's Alumni Association in 2006 and a Trustee of the Lander University Foundation. His name is LeBron Bright of Hodges, South Carolina and whose wife had been an education administrator for many years in South Carolina. Furthermore, is it not also surprising that Lander's past and present legal defense attorney Vance J. Bettis has never once mentioned the name of Dr. Larry A. Jackson in this case of *Ceferina Gayo Hess v. Lander University, et al.* The answer is that what Lander University has done to Petitioner Hess is really without defense in an American court of justice.

Why then did Magistrate (Federal Judge) Catoe, Jr. summarily dismiss this case after having listened to Dr. David L. Hess's oral presentation clearly explaining what you've just read? How can anyone explain how 3 South Carolina governors (Beasley, Hodges, and Sanford), one United States Secretary of Education (Riley), 2 successors to Jackson Lander University presidents (William Moran, 1992-2000 and Daniel Ball, 2000 to the Present), and today 5 federal judges (Catoe & Anderson of the U.S. District Court of South Carolina and Duncan, King, and Niemeyer of the U.S. Court

of Appeals of the Fourth District) all have "passed" when it comes to "reasonable doubt" that Respondent Larry A. Jackson and people under his patronage have patently aggressed Petitioner Hess literally destroying her career (and also her husband's) and personal reputation in the process? Doesn't the public deserve to know the truth about what happened to the Petitioner at Lander College/University? It is definitely in the public interest that this Court should do something proactive to put this scandal before the public eye.

Petitioner Dr. Hess had exhausted all administrative processes through the State of South Carolina Human Affairs Commission and the U.S. Equal Employment Opportunity Commission (EEOC). The latter commission adopted the findings of the State of South Carolina Human Affairs Commission, an agency which did not interview any (not even one) of Petitioner's 31 listed references or witnesses provided by her upon its request. Neither did the EEOC interview any of the shortened list of 13 references or witnesses provided by her upon its request. Petitioner Dr. Hess received the EEOC dismissal & Notice of Rights to Sue on February 18, 2004. Hence, this Civil Action (CA No. 8:04-1474-13 AK) was filed on time by Petitioner Dr. Hess on September 2, 2004, that is within 90 days of her receipt of said notice of February 18, 2004. Said civil action was originally filed in the U.S. District Court of South Carolina pursuant to Title VII of the Civil Rights Act of 1964, among others, on May 11, 2004. Later, an Amended Complaint was filed on September 3, 2002.

This case was scheduled for jury trial, but on June 10, 2005, Respondents filed a motion to dismiss and for summary judgment. On August 1, 2005, Petitioner filed her Memorandum of Points and Authorities in Support of her

Opposition to their Motion to Dismiss and for Summary Judgment. On August 25, 2005, P titioner filed her 42-page Amended Memorandum of Points and Authorities in reply to Respondents' Memorandum of August 10, 2005. Finally, Petitioner filed her 30-page Amended Reply Memorandum to said Respondents' Reply Memorandum of August 10, 2005 on September 9, 2005. The latter was received by the District Court on September 13, 2005.

One hundred thirty-three (133) days later, Magistrate Judge William Catoe, Jr. issued his Report & Recommendation on this case on January 24, 2006 giving the Peitioner until February 10, 2006 to present her Objections to the same. Being a Plaintiff, *Pro Se*, Petitioner, on February 2, 2006, filed an Ex Parte Motion Requesting for an Extension to file her Objections up to February 28, 2006. Petitioner Dr. Hess called the Office of the Clerk of Court 3 times and she was only informed on February 9, 2006, one day before the deadline, that her motion was denied "for lack of a good cause," and which Order she officially received in the mail on February 10, 2006. Being a *Pro Se* Plaintiff and not a practicing lawyer in this jurisdiction, she was only given 16 days to prepare her objections, but technically only a day to prepare her Memorandum of Objections dated February 10, 2006 to Magistrate Judge Catoe, Jr.'s Report and Recommendation which took him 133 days to prepare and, of course, with the able assistance of his court clerks. Nevertheless, Petitioner was able to submit on that day a 12-page Memorandum of Objections emphasizing 4 critical issues or points of law with citations of cases and authorities although she felt that the short time period given her was unfair.

On January 24, 2006, Judge G. Ross Anderson, Jr. granted Respondents' motion for summary judgment on the federal claims but the Court declined to exercise supplemental jurisdiction over the state law claims. The original 10 charges were listed as follows:

(1) DEFAMATION;
(2) AN ILLEGAL SUSPENSION;
(3) BREACH OF CONTRACT;
(4) A STRONGLY ORCHESTRATED, WRONGFUL TERMINATION CAMPAIGN SUCCEEDS;
(5) CIVIL CONSPIRACY;
(6) WHISTLEBLOWING BRINGS RETALIATION;
(7) NEGLIGENCE OF PUBLIC RESPONSIBILITY;
(8) MAINTAINING A HOSTILE WORKING ENVIRONMENT, 1979-2002;
(9) OBSTRUCTION OF JUSTICE; and
(10) VIOLATION OF FIRST AMENDMENT RIGHTS.

Magistrate Judge Catoe, Jr.'s Report & Recommendation of January 24, 2006 was reviewed by Magistrate Judge G. Ross Anderson, Jr. Approximately 3 weeks later, on February 17, 2006, he rendered a decision practically rubber-stamping all of Magistrate Judge Catoe, Jr.'s Report & Recommendation, and giving Petitioner 30 days or until February 19, 2006 to appeal before this Honorable Court.

On November 20, 2006, Petitioner Hess filed a Complaint before the Court of Common Pleas in Greenwood, South

Carolina relative to her State Claims which the U.S. District Court of South Carolina denied pendent or supplemental jurisdiction. Hence, this petition for a writ of certiorari focuses on the federal claims summarily dismissed by the U.S. District Court of South Carolina. However, since the state claims are so closely tied and interlockingly related to the federal claims, Petitioner also prays that this Court will include them in the review of this case.

REASONS FOR GRANTING THE WRIT

This case had been languishing in the United States District Court of South Carolina for more than 4 years and involved massive amounts of material, the result of thousands of hours of work on the part of the Petitioner with the assistance of her very supportive husband, Dr. David L. Hess. He supports this case one hundred percent or even more partly because it was his whistleblowing of Respondent Dr. Larry A. Jackson that led to her suspension and dismissal from Lander University by way of retaliation from the University Administration. There are multiple reasons why the writ should be granted to Petitioner Dr. Hess.

1. The United States Court of Appeals for the Fourth Circuit, in affirming the decision of the United States District Court of South Carolina, is complicit in rendering a judgment extremely tainted with serious errors of law and procedure.

This case that originated in the United States District Court of South Carolina did not involve or did not request for a Rehearing from that particular court for Petitioner

Dr. Hess was not accorded a HEARING from it for the first time. No hearing had occurred at all and Petitioner Dr. Hess was denied HER DAY IN COURT. Hence, the decision of the Appellate Court that this case was supposed to be filed within 14 days after judgment is invalid and does not apply. Petitioner carefully followed the appellate rules as provided by this Honorable Court and this appeal was filed on time, specifically on March 18, 2005. Furthermore, since Petitioner's appeal did not involve or did not request for a rehearing and was not a petition for a rehearing, the 15-page limit for submission is inapplicable. Petitioner submitted 4 copies of her Appellate Brief as mandated by the Court. The Court therefore is in error for basing its decision on formalities as to form requirements inapplicable in this case because Petitioner was requesting for her FIRST HEARING by the Court below and this court. At that time, she was requesting that the case be remanded to the District Court of South Carolina for a HEARING, but no such thing occurred. For this reason, Petitioner was denied DUE PROCESS OF LAW, an essential ingredient every Court of justice to be accorded to every litigant under its jurisdiction. In fact, Judge G. Ross Anderson of the District Court rendered his decision on Petitioner's request for Extension of Time to file her Appeal on the day before the deadline for submission of this important motion.

The decision of this Appellate Court affirming the judgment of Judge G. Ross Anderson of the District Court is in error because he and Judge Catoe, Jr. decided not to accept (or rather refused) material ample evidence in the possession of Petitioner (See photo presented on Appendix F hereof), not even two boxes out of the 50 boxes brought by Petitioner to the Greenville Courthouse during the Status

Conference of June 24, 2005 with Jean Cole as Court Reporter. It is very important to note that the Report & Recommendation of Judge Catoe, Jr. and the Decision and Order of Judge Anderson were rendered primarily on the pleadings and were rendered WITHOUT any in-court hearing and WITHOUT FACTUAL EVIDENCE because Judge Catoe, Jr. REFUSED to accept Petitioner's voluminous evidence, stating that "It was too much paper." Is it not the duty and responsibility of every judge in this United States to decide cases on the basis of evidence? Thus, it is the prerogative of this Honorable Court to rectify this grievous mistake in order that justice will be served for one who truly deserves it.

In short, this case warrants this Court's attention at this critical juncture of the litigation whereby Petitioner (and her husband), since the loss of their teaching careers almost 5 years as of today, without severance pay and other benefits, have suffered immensely economically, socially, and emotionally with all the pain and stress that they have to muster needlessly because of illegal and wrongful actions of Respondents. The Court of Appeals' erroneous and mistaken ruling not only presents an obstacle, rather than an aid, to the ultimate termination of the litigation, but it stands as an erroneous or mistaken precedent that will continue to misdirect other courts and constrain Petitioner and other petitioners similarly situated of their ability to seek full relief in similar future civil cases. The Court of Appeals' failure to decide the issue en banc (but by only 3 judges, namely Duncan, King, and Niemeyer who did not even have any meaningful oral discussion of the case) ensures that the conflict will persist until this Court resolves it.

2. The Fourth Circuit Appellate Court and the United States District Court have abused their discretion or has so far departed from the accepted and usual course of judicial proceedings so as to call for an exercise of this Court's supervisory power.

As a matter of record, there was no attempt by the U.S. District Court of South Carolina, on which the Fourth Circuit Appellate Court's decision was based, to pass Judgment on Petitioner Dr. Hess's 10 charges involving Lander University and its Respondents either individually or as part of this group of respondents. In the strictest sense of the word, her status conference with Judge Catoe, Jr. on January 24, 2005 (without the presence of any of the respondents but only with their Attorney of Record, Vance J. Bettis on the phone) does not constitute a hearing. This was the same conference wherein Judge Catoe, Jr. refused to accept any evidence from the Petitioner who was accompanied that day by her husband, Dr. David L. Hess. Thus, the Court of Appeals' decision affirming the U.S. District Court is invalid and incorrect in light of the accepted principles and standards of judicial procedure. Again, this erroneous ruling will impede, rather than advance, the ultimate resolution of this case. This Court's review will tremendously help in the expeditious and correct resolution of this litigation.

3. Both the Fourth Circuit Appellate Court and the U.S. District Court have ignored an important question of federal law that has not been, but should be, settled by this Court for reasons of public interest and public policy.

Petitioner Dr. Hess was fired from her teaching job two months short of full benefits of retirement and of the so-called TERI (Teachers & Employees Retirement Incentive) benefits as a primary result of the Hess WHISTLEBLOWING and its

resultant RETALIATION, with CIVIL CONSPIRACY emanating from one person whose name has been totally omitted or not mentioned at all in any of their pleadings, in concert with his long-time loyal supporters. He is Respondent Dr. Larry A. Jackson and the herein named other Respondent. This matter will be elucidated in the following paragraphs prepared by my husband David who also lost his job in another public institution (University of South Carolina – Aiken) for instigating the exposure of said Respondent Jackson's false and embellished credentials for about 19 years that elevated him to the presidency of Lander College (now University) in 1973 and continued in Lander's publicity until at least September, 2000.

Petitioner Dr. Hess, who once was a licensed practicing attorney in the Philippines, was never given a reason why she was not granted a hearing. She opines that it may have been because of the behavior of said Respondent Dr. Larry A. Jackson, President of Lander College, Greenwood, South Carolina from July 1, 1973 to June 30, 1992. Prior to that, Respondent Jackson had been the director of Santiago College in Santiago, Chile from 1959 to 1964. However, from 1959 to at least the year 2000, Respondent Jackson allowed himself to be described as having been the top administrator of Santiago College without telling the public of South Carolina that that institution since its establishment in 1880 by American Methodist missionaries had always been a KK-12 or less academy for English-speaking girls, mostly American and British, in Chile's capital city. During his tenure as director of Santiago College, Respondent Jackson, who received the first of five honorary doctorates in January of 1961, that one from the University of the Pacific in Stockton, California, rightfully on occasion, had himself described as its director but never did he inform the American public that Santiago College was

not a college. However, not long after he assumed the presidency of Lander College in 1973, Respondent Jackson began informing that same public that he had once been the President of Santiago College, still not informing them that it had never been a college!

Petitioner Dr.Hess has documentary and/or physical evidence that Lander College, which changed on July 1, 1992 to being Lander University, had from, at least August 1976 to September 2000 described Respondent Jackson as having been Santiago College's president with no proper identification that he had been its director and that it was and still is, in 2006, an academy, not a college.

As early as October 27, 1991, when Lander was still a college and not a university, Petitioner Dr. Hess's husband, Dr. David L. Hess, approached each of Lander College's Board of Trustees by individual letter about this matter, but never received a written reply from any of them. Trustee Mrs. Estelle, now deceased) Mauldin, Lander College '1937 alumna, informed Petitioner Dr. Hess in February of 1992 that her colleagues on that Board had questioned Respondent Jackson and Respondent Dr. Aron G. Tannenbaum about these charges of Dr. David L. Hess at a meeting at which she was absent, but nothing ever officially resulted from it. Also in that David L. Hess letter to Lander College's Board of Trustee, dated October 27, 1991, there was evidence that Respondents Jackson and Tannenbaum had secretly collaborated with a small group of students to float a petition among students on its Greenwood, South Carolina campus to have Petitioner Dr. Hess fired from her tenured assistant professorship of political science at the College. It failed miserably as it should have. Instead, she was peer-voted their 15-member faculty member division "Teacher of the Year"

for both academic years 1978-1979 and 1979-1980 and Lander College's Second Best Teacher (out of 135 faculty members) for 1979-1980.

Petitioner Dr. Hess and her husband would discover in 1995 that Respondent President Jackson, once an ordained Methodist Minister (1954-1959) had twice on December 17, 1979 and again on October 1, 1980 written letters on official Lander College presidential stationery to his own college social fraternity, Kappa Sigma International, based in Charlottesville, Virginia, recommending that the leaders of the fire-Hess petition be accepted for membership and almost immediately they began planned disruptions of some of Petitioner Dr. Hess's classes. Petitioner Dr. Hess and her husband did not know until June, 1982, that Respondent Jackson was a "fraternal brother"of her classroom disruptors. Dr. David L. Hess found this out accidentally in the Archives of Wofford College, Spartanburg, South Carolina when he was given access to Respondent Jackson's official archival file. The information about Respondent Jackson's fraternal affiliation was there at that time but not the information that Santiago College had never been a college! Petitioner Dr. Hess and her husband would affirm that suspicion on the South Bend Campus of the University of Notre Dame in June-July of 1993 after long conversations with a Santiago lawyer (Harvard University graduate) who insisted that Santiago College had never been a college! She since has obtained documentary evidence that he was correct. Today, it is PUBLIC information. Anyone can check the Internet with the same information by accessing it through this website: www.santiagocollege.com .

Why should the public know about all these? The lack of action by all those people of immense power (mentioned on page 7 of this petition), individually and collectively to take public action against the false and embellished credentials of Respondent Jackson has been called by the Petitioner's husband, Dr. David L. Hess, one of the "greatest and shocking disappointments" of his life. The fact that Respondent Jackson and his wife Barbara Jackson, in the opinion of the Petitioner and her husband, still have immense influence over the affairs and policies of Lander University today in 2007 make this "Neglect of Public Responsibility" truly an imminent threat to the present and future of the University and a blot on its honor from the past.

What is the public going to think and, more importantly, do when people in high positions of public responsibility fail to curb and expose college and university presidents with false credentials? What should they think of the credentials of all those past and present who are connected with Lander University? The best way for the American public to determine in its own mind whether or "how much public responsibility has been neglected" by persecuting the Petitioner and her husband with job loss as teachers and not the Respondents listed in the Petitioner's request for this writ. Sooner or later, the lurid details of this case will become public knowledge and sad though it be. Petitioner Dr. Hess feels that "SOONER" in the long run will be better for Lander University and everyone involved in this case than "LATER" will be!

In a pair of separate rulings on the same day, the 8th Circuit Court of Appeals held that a whistleblowing claim under the Federal False Claims Act, 31 U.S.C. §§ 3729-3733,

can be brought against the state and its instrumentalities. In *U.S. ex rel Zissler* v. *Regents of the University of Minnesota*, 154 F.3d 870 (8th Cir. 1998), the Court of Appeals ruled that the University is a "person" for purposes of the Act. In a companion case also brought by a private party but without intervention by the Federal Government, U.S. ex rel. Rodgers v. Arkansas, 154 F.3d 865 (8th Cir. 1998), the appellate court held that the 11th Amendment immunity from suit is inappropriate because the 11th Amendment does not provide immunity from suit by the federal government. The Court explained that even when a False Claims Act suit is brought by a private plaintiff acting alone, the United States still is the real party in interest (emphasis added). Whistleblowers prevailed in seven major cases, all during the latter part of 1998. While suffering a single but significant setback in the Minnesota Court of Appeals in 2005, this spate of cases ¶state levels. See *Garcetti* v. *Ceballos*, 04-473 (Supreme Court 2005 Term). In this case, it is interesting to note Justice David Souter's dissent. "Open speech by a private citizen on a matter of public importance lies at the heart of expression subject to protection by the First Amendment." Of course, this Court should remember that Petitioner Hess in this case is not the Whistleblower, but her husband, who is not officially a party in this litigation, reinforcing the fact that Petition Dr. Hess is simply a VICTIM of RETALIATION from herein Respondents.

4. The Court of Appeals' decision creates a direct Conflict with decisions of this Court and decisions of other courts of appeals.

Other court of appeals cases decided that a Title VII plaintiff need not set forth the legal theory on which he relies

if he sets forth sufficient factual allegations to state a claim showing entitlement to relief. See *Barlow* v. *Pep Boys, Inc.* (ED Pa) No. 84-3421, 10/4/85; *Rohler* v. *TRW, Inc.* (1978, CA 7) 576 F2d 1260, 20 BNA, FEP Cas 337, 16 CCH EPD ¶ 3829. In another case, the Court stated that:

> "Title VII plaintiffs sufficiently alleged the exhaustion of administrative remedies by asserting the filing of EEOC charges, receipt of a right-to-sue notice, and institution of the action within 90 days after receipt of the notice, because those allegations implied the exhaustion of all statutory and administrative prerequisites."

See *Danielson* v. *Du Page Area Vocational Education Authority* (1984, ND Ill) 595 F Supp 27, 37 BNA FEP Cas 885.

In the case of *Batterton* v. *Texas General Land Office* (CA5Tex) 789 F2d 316, 1 BNA IER Cas 918, 122 BNA LRRM 2415, the Court decided that plaintiff cannot be barred from her claims of wrongful suspension and wrongful termination for she has due process property right where there was an explicit understanding that the employee's position was permanent combined with the employee's retention of the position for almost 28 years. Furthermore, the two notable cases of *Seeley* v. *Brotherhood of Painters, etc.* (1962), CA5, 308 F2d 52, 51 BNA LRRM 2042, 45 CCH LC ¶ 17807 and *Marlowe* v. *Fisher Body* (1973, CA6) 489 F2d 1057, 6B BNA FEP Cas 1083, 6 CCH EPD ¶ 8997 concluded that:

> "Under 42 USCS § 1985(3), individuals are prohibited from conspiring to deprive any person or class of persons, either directly or indirectly,

> of the equal protection of the laws, or of equal privileges and immunities of the law. Jurisdiction under § 1985(3) exists upon allegations that the Defendants colluded for the purpose of depriving the plaintiff of equal employment opportunities, that the Defendants acted in furtherance of their agreement, and that the result was injury to the Plaintiff (loss of a lifetime career in teaching, good reputation and professional standing in the community, income, future earnings, etc.)."

It is important to note also at this juncture that under the Age Discrimination in Employment Act of 1967 (29 USCS & 623(f)(2) and § 633(b), it is in violation of the Act to discriminate employees between the ages of 40 and 65 with respect to compensation, terms, conditions, or privileges of employment. When Respondent Lander University suspended and terminated the employment of Petitioner Dr. Hess without just cause, she was only 63 years old. Pub. L. No. 90-202, 81 Sta. 602 (1967), codified as amended at 29 U.S.C. §§ 621-34 prohibits age discrimination in employment by employers, labor organizations, and employment agencies. *Id* § 623.

Furthermore, in two major pronouncements of this Honorable Supreme Court of the United States, summary judgment is appropriate only when it is clear that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *City of Columbia* v. *American Civil Liberties Union*, 323 S.C. 384, 475 S.E.2d 747 (1996). In determining whether any triable issue of fact exists, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the non-moving party. *Summer* v. *Carpenter*, S.C. 492 S.E.2d 55 (1997). The decisions in these two cases run counter to the

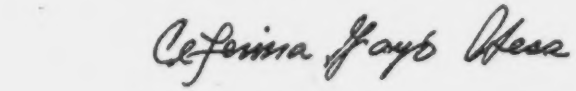
voluminous facts and records of this case. Petitioner Dr. Hess has clearly presented genuine issues of material facts (no less than 10 of them) and further has presented the existence of triable issues of facts as elucidated in her 42-page Memorandum of Points and Authorities in Support of Plaintiff's Opposition to Defendants' Motion to Dismiss and for Summary Judgment (dated August 1, 2005) which contained 90 averments of facts substantiated by clear citation of events related to each and every one of them. These were earlier presented in Petitioner's original Complaint filed on May 11, 2004 and also reiterated in her 25-page Plaintiff's Amended Reply to Defendants' Answer dated November 23, 2004.

Finally, as a Petitioner Pro Se who cannot afford to hire an able and competent attorney on this 5th year of this litigation, please allow Petitioner Dr. Hess to quote Judge Learned Hand when he addressed the Legal Aid Society of New York on February 16, 1951: "If we are to keep our democracy, there must be one commandment: Thou shalt not ration justice." (See Thomas E. Baker, Rationing Justice on Appeal: The Problems of the U.S. Courts of Appeals. A Report of the Justice Research Institute (St. Paul, Minnesota: West Publishing Company, 1994), page ix.

CONCLUSION

WHEREFORE, Petitioner respectfully prays that her request for a writ of certiorari be granted by this Honorable Supreme Court of the United States.

Respectfully submitted,



CEFERINA GAYO HESS, Ph.D.
Petitioner, *Pro Se*
320 Lawson Street
Greenwood, S.C. 29649-2037
Tel. (864) 223-0300
E-mail: lostprofessor2@aol.com

Date: January 17, 2007

APPENDIX

51

Supreme Court U.S.
FILED

(2)

061315 JAN 17 2007

No. _____

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

CEFERINA GAYO HESS,

Petitioner

v.

LANDER UNIVERSITY, *et al.*,

Respondents.

APPENDICES

APPENDIX A Fourth Circuit Court of Appeals Letter of November 14, 2006 Denying Appellant's Motion for Reconsideration Dated November 2, 2006 to Clerk Patricia S. Connor's Order of November 6, 2006.

APPENDIX B Fourth Circuit Court of Appeals Opinion Issued October 19, 2006 (Unpublished *Per Curiam*).

APPENDIX C U.S. District Court Order Dated February 17, 2006 Issued by Judge G. Ross Anderson, Jr.

APPENDIX D Report & Recommendation of Magistrate Judge William M. Catoe, Jr. Dated January 24, 2006.

APPENDIX E Brief Biographical Sketch of Petitioner Dr. Ceferina Gayo Hess.

APPENDIX F Photo of 50 Boxes of Evidence Organized by Petitioner's Husband, Dr. David L. Hess, September 2005.

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APPENDIX A

UNITED STATES COURT OF APPEALS
For The Fourth Circuit
Lewis F. Powell, Jr. United States
Courthouse Annex
1100 E. Main Street, Suite 501
Richmond, Virginia 23219-3517

Patricia S. Connor
Clerk

www.ca4.uscourts.gov

Telephone
(804) 916-2700

November 14, 2006

Ceferina Gayo Hess
320 Lawson Street
Greenwood, SC 29649

Re: 06-1341 Hess v. Lander University
8:04-cv-01474-GRA

Dear Appellant:

We are in receipt of your OBJECTION TO APPELLATE CLERK OF COURT'S ORDER OF NOVEMBER 6, 2006.

This Court's Local Rule 40(d) states that, except for timely petitions for rehearing en banc, cost and attorney fee matters, and other matters ancillary to the filing of an application for writ of certiorari with the Supreme Court, the Office of the Clerk shall not receive motions or other papers requesting further relief in a case after the Court has denied a petition for rehearing or the time for filing a petition for rehearing has expired.

Pursuant to the provisions of Local Rule 40(d), no further action will be taken in this matter.

I enclose for your information a sheet outlining the procedures for applying to the Supreme Court of the United States for a writ of certiorari.

Yours truly,

PATRICIA S. CONNOR
Clerk

/s/ Michael Radday
By: _____
Deputy Clerk

cc: Vance J. Bettis

APPENDIX B

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 06-1341

CEFERINA GAYO HESS,

Plaintiff-Appellant,

versus

LANDER UNIVERSITY; DANIEL W. BALL, President; ROBIN R. AGNEW, The Board of Trustees; ANN B. BOWEN, The Board of Trustees; BOBBY M. BOWERS, The Board of Trustees; C. TYRONE GILMORE, The Board of Trustees; FINIS E. HORNE, The Board of Trustees; MAURICE HOLLOWAY, The Board of Trustees; RAYMOND D. HUNT, The Board of Trustees; J. THOMAS KINARD, The Board of Trustees; GLENN J. LAWHON, Jr., The Board of Trustees; MAMIE W. NICHOLSON, The Board of Trustees; ANTHONY NOURY, The Board of Trustees; SALLY E. SELF, The Board of Trustees; GEORGE R. STARNES, The Board of Trustees; FRED THRAILKILL, The Board of Trustees; S. ANNE WALKER, The Board of Trustees; RICCI LAND, The Board of Trustees; M. CRAIG WHITE, The Board of Trustees; SUSAN C. GOING; LARRY A. JACKSON; WILLIAM T. MARTIN; TIMOTHY L. SNYDER; ARON G. TANNENBAUM; FRIEDERIKE WIEDEMANN,

Defendants-Appellees.

Appeal from the United States District Court for the District of South Carolina, at Anderson. G. Ross Anderson, Jr., District Judge. (8:04-cv-01474-GRA)

Submitted: October 17, 2006 Decided: October 19, 2006

Before NIEMEYER, KING, and DUNCAN, Circuit Judges.

Affirmed by unpublished *per curiam*.

Ceferina Gayo Hess, Appellant *Pro Se*. Vance J. Bettis, GIGNILLIAT, SAVITZ & BETTIS, Columbia, South Carolina, for Appellees.

PER CURIAM:

Ceferina Gayo Hess appeals the district court's order accepting the recommendation of the magistrate judge and denying relief on Hess' civil action concerning her discharge from Lander University. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. Hess v. Lander Univ., No. 8:04-cv-01474-GRA (D.S.C. Feb. 17, 2006). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

JUDGMENT
FILED: October 19, 2006

UNITED STATES COURT OF APPEALS
for the
Fourth Circuit

No. 06-1341
8:04-cv-01474-GRA

CEFERINA GAYO HESS

Plaintiff-Appellant

v.

LANDER UNIVERSITY; DANIEL W. BALL, President; ROBIN R. AGNEW, The Board of Trustees; ANN B. BOWEN, The Board of Trustees; BOBBY M. BOWERS, The Board of Trustees; C. TYRONE GILMORE, The Board of Trustees; FINIS E. HORNE, The Board of Trustees; MAURICE HOLLOWAY, The Board of Trustees; RAYMOND D> HUNT, The Board of Trustees; J. THOMAS KINARD, The Board of Trustees; MAMIE W. NICHOLSON, The Board of Trustees; ANTHONY NOURY, The Board of Trustees; SALLY E. SELF, The Board of Trustees; GEORGE R. STARNES, The Board of Trustees; FRED THRAILKILL, The Board of Trustees; S. ANNE WALKER, The Board of Trustees; RICCI LAND, The Board of Trustees; M. CRAIG WHITE, The Board of Trustees; SUSAN C. GOING; LARRY A. JACKSON; WILLIAM T. MARTIN; TIMOTHY L. SNYDER; ARON G. TANNENBAUM; FRIEDERIKE WIEDEMANN

Defendants-Appellees

Appeal from the United States District Court for the
District of South Carolina at Anderson

In accordance with the written opinion of this Court filed this day, the Court affirms the judgment of the District Court.

A certified copy of this judgment will be provided to the District Court upon issuance of the mandate. The judgment will take effect upon issuance of the mandate.

/s/ Patricia S. Connor

CLERK

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

NOTICE OF JUDGMENT
October 19, 2006

TO: Ceferina Gayo Hess
Vance J. Bettis, Esq.

Judgment was entered this date in Case Number(s): 06-1341. The Court's decision is enclosed.

PETITION FOR REHEARING (FRAP 40)
PETITION FOR REHEARING EN BANC (FRAP 35)

Filing Time	A petition must be received in the clerk's office within 14 days after judgment to be timely. There are three exceptions to this rule:

(1) In all civil cases in which the United States or an agency or officer thereof is a party, any petition for rehearing must be received in the clerk's office within 45 days after entry of judgment.

(2) The Court may grant an extension of time or leave to file a petition for rehearing out of time if the party establishes that the delay resulted from the death or serious illness of counsel or a family member (or of a party or family member in pro se cases) or other circumstances wholly beyond the control of counsel or a party proceeding without counsel.

(3) Prisoner petitions are deemed filed when delivered to prison authorities.

If a petition for rehearing en banc is to be filed, it must be filed at the same time and in the same document as the petition for rehearing and must be clearly identified in the title.

Each case number to which the petition applies must be listed on the petition, even in companion or consolidated cases. Failure to list the individual case numbers on the petition will result in the unidentified cases proceeding to mandate even if a timely petition for rehearing has been filed in a companion or consolidated case.

A timely filed petition for rehearing or petition for rehearing en banc will stay the mandate and toll the running of time for filing a petition

for writ of certiorari.

Purpose

A petition should only be made to direct the Court's attention to one or more of the following situations:

1. A material fact or law overlooked in the decision.
2. A change in the law which occurred after the case was submitted and which was overlooked by the panel.
3. The opinion is in conflict with a decision of the United States Supreme Court, this Court, or another court of appeals, and the conflict is not addressed in the opinion.
4. The proceeding involves one or more questions of exceptional importance.

Statement of Counsel

A petition shall contain an introduction stating that, in counsel's judgment, one or more of the situations exist as described in the above "Purpose" section. The points to be raised shall be succinctly listed in the statement.

Form

The 15 page limit allowed by the Rule shall be observed. The Court requires 4 copies of the petition (20 copies of a petition for rehearing en banc), and a copy of the Court's opinion must be attached to each copy of the petition.

BILL OF COSTS (FRAP 39)

Filing Time	A party to whom costs are allowed, who desires taxation of costs, shall file a bill of costs on or before 11/02/06.

MANDATE (FRAP 41)

Issuance Time	In original proceedings before this Court, there is no mandate. Unless the Court shortens or extends the time, in all other cases, the mandate issues 7 calendar days after the expiration of the time for filing a petition for rehearing. A timely petition for rehearing, petition for rehearing en banc, or motion to stay the mandate will stay the issuance. If the petition or motion is denied, the mandate will issue 7 calendar days later. If a stay of mandate is sought, only the original of a motion need be filed.
Stay	A motion for stay of the issuance of the mandate shall not be granted simply upon request. Ordinarily the motion will be denied unless it would not be frivolous or filed merely for delay and would present a substantial question or otherwise set forth good or probable cause for a stay.

CRIMINAL CASES
(Plan in Implementation of the CJA)

Criminal	In criminal cases, counsel must inform the defendant in writing of the right to file a petition for writ of certiorari from an

adverse decision of this Court. Counsel appointed under the Criminal Justice Act must file their vouchers within 60 days of entry of judgment, denial of a petition for rehearing, or the grant or denial of a petition for writ of certiorari, whichever is later.

PETITION FOR WRIT OF CERTIORARI
(Sup. Ct. R. 13)

Filing Time

Review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only for compelling reasons. The petition must be filed in the United States Supreme Court within 90 days of this Court's entry of judgment. The time does not run from the issuance of the mandate. If a petition for rehearing is timely filed, the time runs from the denial of that petition. Content, fees, and number of copies of a petition for writ of certiorari are governed by the Rules of the United States Supreme Court

APPENDIX C

8:04-cv-01474-GRA Date Filed 02/17/2006 Page 1 of 1
Entry Number 66

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
ANDERSON DIVISION

Ceferina G. Hess,

Plaintiff, **SUMMARY JUDGMENT**

vs. Civil Action No.: 8:04-CV-1474-GRA

Lander University, et al.,

Defendants.

Decision by the Court. This action came to hearing before the court. The issues having been duly heard and the Court having adopted the Magistrate's Report and Recommendation in this case;

IT IS ORDERED AND ADJUDGED that Defendants' motion for summary judgment be GRANTED IN PART such that Plaintiff's federal claims are DISMISSED. It is further ordered that this Court declines to exercise supplemental jurisdiction over Plaintiff's state law claims.

LARRY W. PROPES, CLERK

February 17, 2006

/s/ GBKRAMIR
Deputy Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
ANDERSON DIVISION

Ceferina G. Hess,	)	
	)	
Plaintiff,	)	C/A No. 8:04-1474-GRA-GMC
v.	)	
	)	
Lander University, et al.,	)	**ORDER**
	)	(Written Opinion)
Defendants.	)	
	)	

This matter is before the Court for a review of the magistrate's Report and Recommendation made in accordance with 28 U.S.C. § 636(b)(1)(A) and Local Rule 73.02(B)(2)(g), D.S.C., and filed on January 24, 2006. The magistrate recommends granting Defendants' motion for summary judgment on Plaintiff's federal claims and declining to exercise supplemental jurisdiction over the state law claims. For the reasons stated herein, the magistrate's Report and Recommendation is hereby adopted.

Procedural History

Plaintiff filed this action on May 11, 2004. Defendants filed a motion to dismiss and for summary judgment on June 10, 2005. By order filed on June 14, 2005, pursuant to *Roseboro* v. *Garrison*, 528 F.2d 309 (4th Cir. 1975), Plaintiff was advised of the dismissal procedure and the possible

consequences if she failed to adequately respond to the motion. Plaintiff filed a response to Defendants' motion on August 1, 2005. Defendants filed a reply brief on August 10, 2005, and Plaintiff filed an amended response to the motion on August 15, 2005. She filed a sur-reply to Defendants' reply brief on September 12, 2005.

Standard of Review

The magistrate makes only a recommendation to this Court. The recommendation has no presumptive weight, and responsibility for making a final determination remains with this Court. *Mathews* v. *Weber*, 423 U.S. 261, 270-71 (1976). This Court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made, and this Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). This Court may also "receive further evidence or recommit the matter to the magistrate with instructions." *Id.* In the absence of specific objections to the Report and Recommendation, this Court is not required to give any explanation for adopting the recommendation. *Camby* v. *Davis*, 718 F.2d 198 (4th Cir. 1983). Plaintiff filed objections to the Report and Recommendations on February 14, 2006.

Discussion

Plaintiff states as her first objection that "[t]he Defendants have repeatedly argued that Plaintiff Hess's claims are not barred on the basis of Title VII of the Civil Rights Act of 1964 (Pub. L. 88-352)." However, the two paragraphs following this objection title in no way factually support this assertion. The Court is unclear as to whether there is a typographical error in this first objection, but the Defendants have

consistently argued that Plaintiff, in fact, has no cognizable claim under Title VII. Furthermore, with this objection, Plaintiff does not point to a specific error made in the magistrate's Report and Recommendation. Therefore, this objection is without merit.

Plaintiff's second objection states "Defendants' arguments that Plaintiff's filing of her case with the EEOC was barred by the statute of limitations and no mention of sex was made on the form provided by the EEOC office are without merit." The Report and Recommendation does not discuss the lack of mentioning sex on the EEOC form, and thus the latter part of the second objection is without merit. Regarding the timeliness of this action, Plaintiff appears to argue that (1) this case was timely filed because it was not dismissed by the EEOC, and (2) she is still being subjected to a hostile work environment as a "student" at Lander University. Plaintiff offers no legal support for the assertion that a Title VII action is timely filed if the EEOC does not dismiss it. Further, the The magistrate was correct in finding that any hostile work environment claim that Plaintiff had accrued not later than May 6, 2002, when she was notified of Dr. Daniel W. Ball's intent to dismiss her. Therefore, this objection is without merit.

Plaintiff's third objection states "Defendants have monopolized their arguments on the basis of Plaintiff's deposition." Plaintiff appears to argue in this objection that the magistrate did not completely consider Plaintiff's evidence which Plaintiff argues creates several genuine issues of material fact. However, Plaintiff does not point to specific evidence that creates a genuine issue of material fact relating to a specific conclusion of law made by the magistrate in the Report and Recommendation. Therefore, this objection is without merit.

Plaintiff's fourth objection states "[t]his Honorable Court has pendent jurisdiction as well as supplemental jurisdiction of all state law claims proffered by Plaintiff Hess." Plaintiff is correct in making this assertion. However, where all of the plaintiff's federal causes of action have been dismissed, the court may, in its discretion, decline to exercise supplemental jurisdiction over the remaining state law causes of action. See 28 U.S.C. § 1367(c)(3). Such is the case here, whereby pursuant to this Order, all of Plaintiff's federal claims will be dismissed. Therefore, this Court declines to exercise supplemental jurisdiction over Plaintiff's remaining state law claims.

Plaintiff's fifth and final objection states the "Report & Recommendation ignored or disregarded several important and material facts to the detriment of Plaintiff Hess." None of the facts discussed within this objection by Plaintiff point to a specific error of law made by the magistrate in the Report and Recommendation. Therefore, this objection is without merit.

Conclusion

After a review of Plaintiff's objections and the magistrate's Report and Recommendation, this Court finds that the report is based upon the proper law. Accordingly, the Report and Recommendation is accepted and adopted in its entirety.

IT IS THEREFORE ORDERED that Defendants' motion for summary judgment be GRANTED IN PART such that Plaintiff's federal claims are DISMISSED.

IT IS FURTHER ORDERED that this Court declines to exercise supplemental jurisdiction over Plaintiff's state law claims.

IT IS SO ORDERED.

/s/ G. Ross Anderson, Jr.
G. ROSS ANDERSON, JR.
United States District Judge

Anderson, South Carolina
February 17, 2006.

NOTICE OF RIGHT TO APPEAL

Plaintiff has the right to appeal this Order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure. Failure to meet this deadline, as modified by Rule 4 of the Federal Rules of Appellate Procedure, will waive the right to appeal.

APPENDIX D

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON DIVISION

Ceferina G. Hess, Plaintiff,	)	Civil Action No. 8:04-1474 GRA-WMC
vs.	)	
Lander University, *et al.*,	)	**REPORT OF MAGISTRATE JUDGE**
Defendants.	)	

This matter is before the court on the defendants' motion to dismiss and for summary judgment. In an amended complaint filed September 3, 2004, the *pro se* plaintiff asserted ten causes of action against the defendants regarding her employment as a professor at Lander University ("Lander") and her discharge from Lander.

Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(A) and Local Civil Rule 73.02(B)(2)(e) D.S.C., all pretrial matters in cases involving *pro se* litigants are referred to a United States Magistrate Judge for consideration.

The defendants filed a motion to dismiss and for summary judgment on June 10, 2005. By order filed on June 14, 2005, pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir.

1975), the plaintiff was advised of the dismissal procedure and the possible consequences if she failed to adequately respond to the motion. The plaintiff filed a response to the defendants' motion on August 1, 2005. The defendants filed a reply brief on August 10, 2005. She filed a sur-reply to the defendants' reply brief on September 12, 2005.

FACTS PRESENTED

The plaintiff taught political science at Lander University from 1975 until 2002. In 1990, the plaintiff filed a charge with the Equal Employment Opportunity Commission ("EEOC") alleging that she was denied promotion to the rank of full professor by Lander's then-President Larry Jackson. She further alleged that she was discriminated against with respect to her salary because of her national origin (native-born Filipino) and her gender. After exhausting the EEOC process, the plaintiff brought a lawsuit in federal court, which was tried before this court in 1993. This court entered judgment in favor of Lander, and the Fourth Circuit Court of Appeals affirmed. The Supreme Court then dismissed the plaintiff's petition for writ of certiorari (pl. dep., ex. 1).

On April 30, 2002, the plaintiff, who was at that time a tenured associate professor at Lander, received a second consecutive annual review with an overall rating of unsatisfactory (Daniel Ball dep., def. ex. 3, ex. 23, 31). Her teaching effectiveness had previously been rated "marginally satisfactory" in 1996-97 by then-chair Dr. Robert Figueira and "unsatisfactory: in 1999-2000 by Dr. Tim Snyder (Ball dep., def. ex. 3, ex. 18, 47). The *Faculty Handbook* at Lander states, and Dr. Daniel W. Ball, Lander's President, confirmed, that "the chief duty of each faculty member is to teach effectively the subject matter of the courses which he/she is assigned" (Ball dep. 197, pl. ex. 1, § 1, p. 6). The *Faculty*

Handbook further provides that a faculty member's receipt of an overall rating of "unsatisfactory" on an annual review followed by failure "to make the required progress toward satisfactory performance may result in initiating the termination process as outlined in Section IV.C. 5 of the *Faculty Handbook*" (Ball dep., pl. ex. 1, § IV, p. 18). The referenced section IV.C.5 of the *Faculty Handbook* provides that a tenured faculty member may be terminated for "cause" which is defined to "include but not...limited to" specified grounds including "incompetence" and "neglect of duty", among others (Ball dep., pl. ex. 1, § IV, p. 11).

Also during 2000 and 2001, Dr. Friederike Wiedemann, Lander's Vice President for Academic Affairs, had repeated discussions with the plaintiff about her allegedly unprofessional conduct both inside and outside the classroom (Ball dep. 234-81, def. ex. 2, ex. 21, 31, 40-44). On May 3, 2002, Dr. Ball advised the plaintiff that he intended to dismiss Her from the faculty for unsatisfactory performance and unprofessional behavior unless she chose to resign or retire (pl. dep., ex. 4). The plaintiff responded on May 3, 2002, demanding that Dr. Ball specify her unprofessional behavior (pl. dep., ex. 5). Dr. Ball replied on May 6, 2002, with the requested detail and further advised Hess that, effective immediately, she was suspended from all faculty duties pending her dismissal (pl. dep., ex. 6). The suspension was with pay. The *Faculty Handbook* gives the President the authority to dismiss faculty members subject to the faculty member's right to contest her dismissal in a trial-type hearing before the Academic Freedom, Grievance and Due Process Committee (hereafter referred to as the Faculty Grievance Committee), a committee appointed by the Faculty Senate, and an appeal to the Lander Board of Trustees, which is confined to the record made before the Faculty Grievance

Committee (Ball dep. 195, pl. ex. 1, § 11, pp. 9-11 and § IV, pp. 11-12).

On September 27, 2002, the Faculty Grievance Committee convened and held an all-day hearing on the plaintiff's challenge to her dismissal. Eleven witnesses testified under oath and were cross-examined, 55 exhibits were offered into evidence, and the proceedings were transcribed by a court reporter who was present throughout the hearing (def. m.s.j., ex. 2, 3). On October 15, 2002, the Faculty Grievance Committee issued its report and recommendation to Dr. Ball. The Committee unanimously found that the preponderance of evidence adduced at the hearing supported the charges that the plaintiff's teaching was ineffective, that she had engaged in unprofessional behavior, and that she had been insubordinate in failing to heed directives issued by her by both Dr. Wiedemann and her division chairs. The Committee further found that the plaintiff's allegations of a far-flung conspiracy among Lander administrators, faculty, staff and students was unsubstantiated by any evidence, was defamatory and was itself evidence of unprofessional conduct (pl. dep., ex 8). The Committee concluded that dismissal was warranted and so recommended to Dr. Ball. On July 17, 2002, Dr. Ball notified the plaintiff that he had accepted the Faculty Grievance Committee's recommendation, that she had the right to appeal to the Board of Trustees within 30 days, and that her pay status would continue until the latter of the expiration of 30 days or the date the Board acted on her appeal (pl. dep., ex. 9).

The plaintiff then appealed to the Board of Trustees (pl. dep., ex. 10). The record was thereafter transmitted to the Board for its consideration (pl. dep., ex. 11). On December 13, 2002, a committee of the Board appointed by the Board chair heard oral argument on the plaintiff's appeal (pl. dep., ex. 15). After that hearing, the committee unanimously

recommended to the full Board that the plaintiff's dismissal be upheld and her appeal denied. The full Board accepted that recommendation and voted to deny the plaintiff's appeal. The plaintiff was notified of the Board's action on December 165, 2002 (pl. dep., ex. 16).

On June 6, 2003, Hess filed a charge of discrimination alleging that she was dismissed from the faculty because of her national origin and in retaliation for her 1990 charge of discrimination that led to the 1993 trial before this court. She also alleged that she was discriminated against with respect to her salary because of her national origin and her previous (i.e., 1990) charge (pl. dep., ex. 17). The plaintiff filed this action on May 11, 2004. Prior to service of the summons and complaint, she sought and was granted leave to file an amended complaint which was first served on the defendants in September of 2004.

In her amended complaint, the plaintiff alleges federal claims of hostile work environment in violation of Title VII of the Civil Rights Act of 1964, as amended, and violation of her First Amendment rights. She also alleges state law claims for defamation, wrongful suspension, breach of contract, wrongful discharge, civil conspiracy, retaliatory discharge, "neglect of public responsibility," and obstruction of justice. The defendants are as follows: Dr. Daniel Ball, Lander's President; Dr. Larry Jackson, Lander's President Emeritus; Dr. Friederike Wiedemann, Lander's Vice President for Academic Affairs; Drs. Tim Snyder and Bill Martin, who served as the plaintiff's division heads during academic years 1999-2000 and 2000-01 (Snyder) and 2001-02 (Martin); Susan Going, Chair of Lander's Faculty Senate during academic year 2001-02; Dr. Aron Tannenbaum, Professor of Political Science at Lander; and 17 members of Lander's Board of Trustees at the time of the plaintiff's discharge.

APPLICABLE LAW

Federal Rule of Civil Procedure 56© states, as to a party who has moved for summary judgment:

> The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

Accordingly, to prevail on a motion for summary judgment, the movant must demonstrate that: (1) there is no genuine issue as to any material fact; and (2) that he is entitled to judgment as a matter of law. As to the first of these determinations, a fact is deemed "material" if proof of its existence or non-existence would affect disposition of the case under applicable law. *Anderson* v. *Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). An issue of material fact is "genuine" if the evidence offered is such that a reasonable jury might return a verdict for the non-movant. *Id.* at 257. In determining whether a genuine issue has been raised, the court must construe all inferences and ambiguities against the movant and in favor of the non-moving party. *United States* v. *Diebold, Inc.*, 369 U.S. 654, 655 (1962).

The party seeking summary judgment shoulders the initial burden of demonstrating to the district court that there is no genuine issue of material fact. *Celotex Corp.* v. *Catrett*, 477 U.S. 317, 323 (1986). Once the movant has made this threshold demonstration, the non-moving party, to survive the motion for summary judgment, may not rest on the allegations

averred in his pleadings. Rather, the non-moving party must demonstrate that specific, material facts exist which give rise to a genuine issue. *Id.* at 324. Under this standard, the existence of a mere scintilla of evidence in support of the plaintiff's position is insufficient to withstand the summary judgment motion. *Anderson*, 477 U.S. at 252. Likewise, conclusory allegations or denials, without more, are insufficient to preclude the granting of the summary judgment motion. *Ross* v. *Communications Satellite Corp.*, 759 F.2d 355, 365 (4th Cir. 1985). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted." *Anderson*, 477 U.S. at 248. Furthermore, Rule 56(e) provides in pertinent part:

> When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleadings, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

Fed. R. Civ. P. 56(e). Accordingly, when Rule 56(e) has shifted the burden of proof to the non-movant, he must produce existence of every element essential to his action that he bears the burden of adducing at a trial on the merits.

ANALYSIS

Title VII

In her eighth cause of action, the plaintiff alleges a claim for hostile work environment. She references Title VII in the amended civil cover sheet that she attached to her amended complaint; accordingly, it appears to this court that she intends to pursue her claim under Title VII. As noted by the defendants, a Title VII claim can be asserted only against an employer and cannot be asserted against individuals. See Lissau v. Southern Food Services, Inc., 159 F.3d 177, 180-81 (4th Cir. 1998). Therefore, the claim can be maintained only against Lander.

The defendants argue that the Title VII claim for hostile work environment against Lander fails because it was not exhausted in the charge of discrimination that the plaintiff filed with the EEOC on June 6, 2003. In her EEOC charge, the plaintiff alleged two claims: (1) that she was denied equal pay because she "filed a discrimination complaint alleging unequal treatment because of my National Origin" and (2) that she was terminated from employment for "pretextual" reasons when the real reason was her national origin and the filing of her previous complaint of discrimination (pl. dep., ex. 17). In her description of why she felt she was denied equal pay, the plaintiff alleged: "I was the only Filipino-American in the entire university and have been subjected to hostile treatment during my tenure." *Id.* The defendants argue the "casual reference" to hostile treatment is insufficient to constitute exhaustion of a claim of hostile work environment (def. m.s.j.

33-34). However, for purposes of this motion only, the court will assume that this reference to hostile work environment was sufficient and the claim has been exhausted.

The defendants next argue that even if the claim is exhausted, it is still untimely. This court agrees. The plaintiff was suspended from all faculty duties and notified of Dr. Ball's intent to dismiss her on May 6, 2002[1] (pl. dep. Ex 6). She had no contact with any of the non-Board member defendants, the defendants who allegedly created her hostile work environment, after May 6, 2002 (pl. dep. 29-31). Title VII requires that individuals complaining of discrimination file a charge of discrimination with the EEOC within 180 days of the alleged unlawful employment practice. 42 U.S.C. § 2000e-5(e)(1). However, because South Carolina is a deferral state, charging parties are afforded the more liberal 300-day deadline to file with the South Carolina Human Affairs Commission. *Id.* The plaintiffs are generally time-barred from recovering for any discrete act of discrimination occurring prior to the 300-day deadline. *National Railroad Passenger Cor.* v. *Morgan*, 536 U.S. 101 (2002) ("*Morgan*").

The United States Supreme Court has distinguished hostile work environment claims from discrete acts of discrimination for purposes of determining statutory period. In *Morgan*, The Court held that:

> [T]he statute precludes recovery for discrete acts

[1] As noted above, in a letter dated May 3, 2002, Dr. Ball informed the plaintiff of his intent to initiate formal dismissal proceedings for cause against her because of her unsatisfactory performance evaluations and unprofessional behavior. She was notified that she could choose to resign or retire (pl. dep., ex. 4). The letter dated May 6, 2002, provided more detail and stated that the plaintiff was "suspended from all faculty responsibilities...effective immediately" (pl. dep., ex. 6)

> of discrimination or retaliation that occur outside the statutory time period…[but] consideration of the entire scope of a hostile work environment claim, including behavior alleged outside the statutory time period, is permissible for the purposes of assessing liability, so long as any act contributing to that hostile environment takes place within the statutory period.

Id. at 105. When addressing discrete acts of discrimination, the Court stated:

> [D]iscrete discriminatory acts are not actionable if time barred, even when they are related to acts alleged in timely filed charges. Each discrete discriminatory act starts a new clock for filing charges alleging that act. The charge, therefore, must be filed within the . . . 300-day time period after the discrete discriminatory act occurred.

Id. at 113.

In this case, any hostile work environment claim that the plaintiff had accrued not later than May 6, 2002. No act Contributing to the alleged hostile environment took place within the statutory period. The fact that the plaintiff challenged her dismissal before the Faculty Grievance Committee and appealed to the Board of Trustees, which resulted in her final paid date of employment being December 13, 2002, does not operate to extend the limitations period because these proceedings were not part *of* any alleged "hostile work environment." *See* Wallin v. *THC-Chicago, Inc.*, No. 99C3173, 2004 WL 2535283, *7 (N.S. Ill. 2004) (holding that fact that plaintiff was fired within 300-day period preceding her filing of charge could not be used to

render timely otherwise time-barred claim of hostile work environment where firing was disparate act and not part of alleged hostile work environment). Based upon the foregoing, the plaintiff's hostile work environment claim is time-barred and should be dismissed.

Even if the claim was timely, the plaintiff cannot establish that the alleged conduct was based upon her national origin and/or retaliation for her prior claim of discrimination. In her response to the motion for summary judgment, the plaintiff discusses various incidents dating back to 1979 (pl. am. Resp. 34-39). However, she comes forward with no evidence that the alleged conduct was based upon her national origin and/or retaliation for her prior claim of discrimination. Furthermore, the plaintiff has not shown that the conduct was so severe or pervasive that it altered the conditions of her employment and created a hostile work environment. See *Harris* v. *Forklift Sys., Inc.*, 510 U.S. 17, 21-23 (1993). Based upon the foregoing, the plaintiff's Title VII hostile work environment claim fails.

The plaintiff argues that her hostile work environment claim is brought pursuant to Title 42, United States Code, Section 1981, rather than Title VII, and thus she is not required to exhaust administrative remedies as a prerequisite to a judicial claim for relief. However, as argued by the defendants (def. reply 10), Section 1981[2] does not prohibit discrimination on the basis of national origin or gender. *Schilling* v. *Rutherford Pediatrics, P.A.*, 346 F. Supp.2d828, 836 (W.D.N.C. 2004). Further, as noted above, the plaintiff has come forward with no evidence connecting the hostile

[2] Title 42, United States Code, Section 1981, provides in pertinent part: "All persons within the jurisdiction of the United States shall have the same right... to make and enforce contracts...as is enjoyed by white citizens...."

work environment she alleges to her national origin and/or her previous Title VII lawsuit.

The plaintiff also alleged in her EEOC charge that she was terminated from employment based upon her national origin and/or in retaliation for her previous Title VII lawsuit. The plaintiff did not specifically plead such a claim in her amended complaint. However, even if a claim for discriminatory and/or retaliatory discharge under Title VII had been properly pled, it would fail.

The defendants argue that the plaintiff's charge of discrimination was untimely, and therefore any discrimination/retaliation claim is barred. As noted above, the plaintiff was notified on May 6, 2002, by Dr. Ball that he intended to dismiss her as a faculty member because of her second consecutive overall unsatisfactory review and her unprofessional conduct (pl. dep., ex. 6). The plaintiff testified in her deposition that she understood that the May 6th letter meant that she would be terminated and that Dr. Ball would not change his mind. She further testified that she believed the notice of dismissal was discriminatory (pl. dep. 63-66). The Fourth Circuit Court of Appeals has held that the limitations period begins to run from the earlier of "the time of discharge or...the moment the employee received advance notice of the pending discharge." *Hamilton* v. *lst Source Bank*, 928 F.2d 86, 88 (4th Cir. 1990) (en banc). The United States Supreme Court has held that where an employee is given advance notice that he will be discharged, his time for filing a discriminatory discharge begins to run from the date he received such notice, not from his final date of employment. *Chardon* v. *Fernandez*, 454 U.S. 6, 8 (1981). As the Court explained in *Chardon*, "[I]n [*Delaware State College* v. *Ricks*, 449 U.S. 250 (1980)] we held that the proper

focus is on the *discriminatory* act, not the point at which the *consequences* of the act become painful. The fact of termination is not itself an illegal act." *Id.* at 8 (emphasis in original). The plaintiff filed her charge of discrimination on June 6, 2003—over a year after she was notified of Dr. Ball's intent to initiate dismissal proceedings. Accordingly, the filing of the charge exceeded the 300-day limitations period.

Even if the charge was timely, the plaintiff's claim would fail. She admitted in her deposition that she had no direct evidence that the decision to dismiss her was motivated by her national origin and/or her prior complaint of discrimination (pl. dep. 44-47), 64-66). Under the burden-shifting framework set forth in *McDonnell Douglas Corp.* v. *Green*, 411 U.S. 792, 802-804 (1973), the allocation of proof is as follows: (1) the plaintiff-employee must first establish a *prima facie* case of discrimination; (2) if the plaintiff succeeds in proving the *prima facie* case, the burden shifts to the defendant-employer to articulate a legitimate non-discriminatory reason for its actions; and (3) if the defendant carries this burden, the plaintiff must then establish by a preponderance of the evidence that the reason articulated by the employer is a pretext to mask unlawful discrimination. *Texas Dept. of Community Affairs* v. *Burdine*, 450 U.S. 248, 252-53 (1981) (quoting *McDonnell Douglas*, 411 U.S. at 802-03).

To establish a *prima facie* case of discriminatory discharge, a plaintiff must show:

> (1) that [s]he is a member of a protected class; (2) that [s]he suffered from an adverse employment action; (3) that at the time the employer took the adverse employment action [s]he was performing at a level that met [h]er employer's legitimate expectations; and

(4) that the position was filled by a similarly qualified applicant outside the protected class. *King* v. *Rumsfeld*, 328 F.3d 145, 149 (4th Cir. 2003) (citing *Brinkley* v. *Harbour Recreation Club*, 180 F.3d 598, 607 (4th Cir. 1999)). As argued by the defendants, the plaintiff cannot prove a *prima facie* case of discriminatory discharge because she cannot show that her performance at the time of her discharge was satisfactory. The overwhelming evidence shows that Dr. Ball discharged the plaintiff because her overall performance remained unsatisfactory over two successive years and he believed she engaged in unprofessional conduct, including a failure to heed instructions of her supervisor (pl. dep. Ex. 4, 6; Ball dep. 12-14, 211-15, 217-18).

In order to establish a prima facie case of retaliation, the plaintiff must show that "(1) she engaged in a protected activity; (2) the employer took adverse employment action against her; and (3) a causal connection existed between the protected activity and the asserted adverse action." *Matvia* v. *Bald Head Island Mgmnt.*, Inc., 259 F.3d 261, 271 (4th Cir. 2001) (quoting *Von Gunten* v. *Maryland*, 243 F.3d 858, 863 (4th Cir. 2001)). The plaintiff has not shown a causal connection between her prior lawsuit and her termination from employment.

Even if the plaintiff could establish prima facie cases of discrimination and/or retaliation, she cannot carry her burden with regard to showing pretext. When asked in her deposition what led her to believe she was terminated because she was a Filipino-American, the plaintiff responded, "I'm the only native born Filipino in the faculty for all the 27 years that I had been here and even before" (pl. dep. 44). This, without more, is insufficient to

survive summary judgment. Further, the plaintiff conceded in her deposition that she is not aware of any other faculty member who received successive overall unsatisfactory reviews and who would thus be similarly situated to her (pl. dep. 64-66). The plaintiff also testified that she believes the "real" reason that Dr. Ball dismissed her is because he had to choose between keeping his job or firing her, and he opted to keep his job (pl. dep. 66-70). Based upon the foregoing, any claim of discriminatory/retaliatory discharge fails.

Obstruction of Justice

In her ninth cause of action, the plaintiff asserts a claim for obstruction of justice. This claim fails because there is no civil claim for obstruction of justice under federal law, and there is no South Carolina appellate case law recognizing such a claim. See, *e.g.*, *Scherer* v. *United States*, 241 F.Supp.2d 1270, 1282 (D. Kan. 2003) ("Federal courts have consistently denied a private civil cause of action under…the criminal statute against…obstruction of justice."); *Culberson* v. *Doan*, 125 F.Supp.2d 252, 279 (S.D. Ohio 2001) (no civil claim for obstruction of justice available under federal or state law). Accordingly, this claim should be dismissed.

First Amendment

In her tenth cause of action, the plaintiff alleges that she was discharged from employment in retaliation for her exercise of her right of free speech under the First Amendment to the United States Constitution. In that cause of action, the plaintiff contends:

85. On January 17, 2001, Defendant Wiedemann Wrote a letter to the Plaintiff falsely charging her

with rumor mongering a married colleague's adulterous affair with a recently graduated alumna mother.

86. On June 18, 2002, and again on August 8, 2002, Defendant President Ball charged her with making undesignated derogatory remarks on campus, a charge he eventually used on August 8, 2002, to remove all her faculty privileges, including free accessibility to her campus office of 20 years (1982-2002).

87. On August 2, 2002, the Plaintiff wrote Defendant President Ball requesting his permission to speak to faculty peers on August 16, 2002, regarding her suspension by him on May 6, 2002, and this request was rejected.

88. Between December 20, 2002, and February 7, 200[3], the Plaintiff requested that Lander University publicize her termination, but Defendant President Ball refused to do so. Included, in those letters was also Plaintiff's request for severance pay which he also refused to respond.

89. Between April 7, 2004, and April 9, 2004, Plaintiff Hess hand-delivered 140 envelopes of information to the various departments of Lander University regarding her suspension and termination. Some of these envelopes were intercepted by Defendant Ball's request, and as of September 1, 2004, she has yet to account for all of them. None of the listed defendants…in this lawsuit have ever denied any of the allegations found in those particular envelopes.

(Am. Comp. ¶¶ 85-89).

In order to state a claim under the First Amendment for retaliatory discharge, a public employee must prove that: (1) the employee spoke on a matter of public concern; (2) the employee's interest in speaking on the matter outweighs the government's interest in providing effective and efficient services to the public; and (3) the speech was a substantial factor in the decision to terminate the employee. *McVey* v. *Stacy*, 157 F.3d 271, 277-78 (4th Cir. 1998).

Matters of public concern protected by the First Amendment do not include "[p]ersonal grievances, complaints about conditions of employment, or expressions about other matters of personal interest." *Stroman* v. *Colleton County School Dist.*, 981 F.2d 152, 156 (4th Cir. 1993). Whether the speech relates to matters of public concern rests on "whether the public or the community is likely to be truly concerned with or interested in the particular expression, or whether it is more properly viewed as essentially a private matter between employer and employee." *Berger* v. *Battaglia*, 779 F.2d 992, 999 (4th Cir. 1985) (internal quotation marks omitted). Furthermore, whether speech fairly relates to a public concern or expresses a private grievance or a matter of immediate self-interest must be determined by the content. In determining whether a retaliatory employment decision violates the First Amendment, the court must balance "the interests of the employee, as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting efficiency of the public services it performs through its employees." See *Connick* v. *Myers*, 461 U.S. 138, 140 (1983) (citations omitted).

The Fourth Circuit has set forth the following non-exhaustive list of factors to be considered in balancing the employee's interest in speaking on matters of public concern

against the government's interest in providing effective and efficient public services: whether the employee's speech (1) impairs discipline by superiors; (2) impairs harmony among co-workers; (3) has a detrimental impact on close working relationships; (4) impedes the performance of the public employee's duties; (5) interferes with the operation of the agency; (6) undermines the mission of the agency; (7) is communicated to the public or to co-workers in private; (8) conflicts with the responsibilities of the employee within the agency; and (9) makes use of the authority and public accountability the employee's role entails. *McVey*, 157 F.3d at 278. "[A] public employee, who has a confidential, policy-making, or public contact role and speaks out in a manner that interferes with or undermines the operation of the agency, its mission, or its public confidence, enjoys substantially less First Amendment protection than does a lower level employee." *Id.* at 277.

As argued by the defendants, most of the alleged actions by the defendants occurred after Dr. Ball notified the plaintiff of his intent to dismiss her. Further, she has not and cannot prove that the matters were of public concern, rather than "[p]ersonal grievances, complaints about conditions of employment, or expressions about the matters of personal interest" and that such constitutionally protected speech was a substantial factor in the decision to terminate her. Accordingly, the First Amendment claim fails.

Due Process

In her second cause of action, the plaintiff alleges that she was illegally suspended from her position as a tenured associate professor at Lander (am. Comp. ¶¶ 9-14). To the extent that the plaintiff claims that her suspension violated her

state and federal constitutional right of due process, her claim fails. As argued by the defendants, the issue is whether the plaintiff had a constitutionally protected property right as a tenured faculty member to continue exercising her academic duties pending the Faculty Grievance Committee's and the Board of Trustee's decisions on her appeal of her dismissal. In *Royster* v. *Board of Trustees of Anderson County School Dist. No. 5*, 774 F.2d 618 (4th Cir. 1985), the Fourth Circuit Court of Appeals held that an educator's status as "tenured" does not entitle him, under the due process clause of the Fourteenth Amendment, "not only…to receive the compensation guaranteed [him], but also the right to actively engage in and execute the duties of his office." *Id.* at 621. In *Fields* v. *Durham*, 909 F.2d 94 (4th Cir. 1990), the Fourth Circuit Court of Appeals stated:

> [W]e have previously held that the constitutionally protected property interest in employment does not extend to the right to possess and retain a particular job or to perform particular services. Rather, the property interest is more generally in continued employment, and no deprivation exists as long as the employee receives payment of the full compensation due under the contract.

Id. at 98 (citations omitted). In this case, the plaintiff was paid through the term of her 2001-2002 faculty contract, and indeed through December 13, 2002, when the Board of Trustees voted to deny her appeal of Dr. Ball's decision to terminate her employment (pl. dep. 29). Based upon the foregoing, the plaintiff's claim fails.

Civil Conspiracy

In her fifth cause of action, the plaintiff alleges a claim for civil conspiracy. She claims that defendants Jackson and Tannenbaum conspired to have students disrupt her political science class and to have her fired. The actions complained of by the plaintiff allegedly occurred between 1978 and 1993. The plaintiff contends that the claim is viable under Title 42, United States Code, Section 1985(3)[3] To prove a civil conspiracy under Section 1985(3), a plaintiff must show:

> (1) a conspiracy of two or more persons, (2) who are motivated by a specific class-based, invidiously discriminatory animus to (3) deprive the plaintiff of the equal employment of rights secured by the law

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[3]The statute reads in pertinent part:

> **Depriving persons of rights or privileges.** If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

42 U.S.C. § 1985(3).

> to all, (4) and which results in injury to the plaintiff as (5) a consequence of an overt act committed by the defendants in connection with the conspiracy.

Hejirika v. *Maryland Div. of Correction*, 264 F. Supp.2d 341, 347 (D. Md. 2003) (citing Simmons v. Poe, 47 F.3d 1370, 1376 (4th Cir. 1995)). "It is 'well settled' that 'a claimant must show an agreement or a "meeting of the minds" by defendants to violate the claimant's constitutional rights' in order to prove a § 1985(3) conspiracy." *Langadinos* v. *Appalachian School of Law*, No. 1:05CV00039, 2005 WL 2333460, *12 (W.D.Va. Sept. 25, 2005) (quoting Simmons, 47 F.3d at 1377 (citations omitted)). "The Fourth Circuit has 'specifically rejected section 1985 claims whenever the purported conspiracy is alleged in a merely conclusory manner, in the absence of concrete supporting facts.'" Id. (quoting *Simmons*, 47 F.3d at 1377). The plaintiff has not shown any evidence that the defendants were "motivated by a specific class-based, invidiously discriminatory animus," nor has she shown a "meeting of the minds" of the defendants. Clearly the plaintiff has failed to establish a *prima facie* case of civil conspiracy under Section 1985(3).

Other Statutes

In her response to the motion for summary judgment, the plaintiff states for the first time that she is alleging a claim for whistleblowing under the anti-retaliation provision of the False Claims Act, 31 U.S.C. § 3730(h). As argued by the defendants, her attempt to inject this new claim at this late date comes too late. See *Witt* v. *American Trucking Ass'ns, Inc.*, 860 F.Supp. 295, 304-306 (D.S.C. 1994). Further, the plaintiff cited the following statutes in her amended civil

cover sheet, but did not mention them in her complaint. Titles I and VI of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Equal Pay Act. In another paper filed by the plaintiff, she mentioned Title IX of the Education Employment Amendments of 1972. The plaintiff has come forward with no evidence supporting any such claims and, therefore, even if the claims were considered properly pled, the claims fail.

State Law Claims

The court should decline to exercise supplemental jurisdiction over the plaintiff's remaining state law claims as it is recommended that summary judgment be granted on the federal claims. See 28 U.S.C. § 1367©.

CONCLUSION AND RECOMMENDATION

Wherefore, based upon the foregoing, it is recommended that the defendants' motion for summary judgment be granted on the plaintiff's federal claims and that the court decline to exercise supplemental jurisdiction over the state law claims.

/s/ William M. Catoe
WILLIAM M. CATOE
UNITED STATES MAGISTRATE JUDGE

January 24, 2006

Greenville, South Carolina

8:04-cv-01474-GRA Date Filed 01/24/2006 Page 1 of 1
Entry Number 60

Notice of Right to File Objections to Magistrate Judge's "Report and Recommendation"
&

The Serious Consequences of a Failure to Do So

The parties are hereby notified that any objections to the attached Report and Recommendation (or Order and Recommendation) must be filed within **ten (10) days** of the Date of service. 28 U.S.C. § 636 and Fed. R. Civ. P. 72(b). The time calculation of this ten-day period excludes weekends and holidays and provides for an additional three days for filing by mail. Fed. R. Civ. P. 6. A magistrate judge makes only a recommendation, and the authority to make a final determination in this case rests with the United States District Judge. See Mathews v. Weber, 423 U.S. 261, 270-271 (1976); and Estrada v. Witkowski, 816 F. Supp. 408, 410, 1993 U.S. Dist. LEXIS®3411 (D.S.C. 1993).

During the ten-day period for filing objections, **but not Thereafter**, a party must file with the Clerk of Court specific, written objections to the Report and Recommendation, if he or she wishes the United States District Judge to consider any objections. **Any written objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections.** See Keeler v. Pea, 782 F. Supp. 42, 43-44, 1992 U.S. Dist. LEXIS® 8250 (D.S.C. 1992); and Oliverson v. West Valley City, 875 F. Supp. 1465, 1467, 1995 U.S. Dist. LEXIS® 776 (D. Utah 1995). Failure to file specific, written

objections shall constitute a waiver of a party's right to further judicial review, including appellate review, if the recommendation is accepted by the United States District Judge. See United States v. Schronce, 727 F.2d 91, 94 & n.4 (4th Cir.), *cert. denied*, Schronce v. United States, 467 U.S. 1208 (1984); and Wright v. Collins, 766 F.2d 841, 845-847 & nn. 1-3 (4th Cir. 1985). Moreover, if a party files specific objections to a portion of a magistrate judge's Report and Recommendation, but does not file specific objections to other portions of the Report and Recommendation, that party waives appellate review of the portions of the magistrate judge's Report and Recommendation to which he or she did not object. In other words, a party's failure to object to one issue in a magistrate judge's Report and Recommendation precludes that party from subsequently raising that issue on appeal, even if objections are filed on other issues. Howard v. Secretary of HHS, 932 F.2d 505, 508-509, 1991 U.S. App. LEXIS® 8487 (6th Cir. 1991). See also Praylow v. Martin, 761 F.2d 179, 180 n. 1 (4th Cir.) (party precluded from raising on appeal factual issue to which it did not object in the district court), *cert.* denied, 474 U.S. 1009 (1985). In Howard, supra, the Court stated that general, non-specific objections are not sufficient:

> A general objection to the entirety of the [magistrate judge's] report has the same effects as would a failure to object. The district court's attention is not focused on any specific issues for review, thereby making the initial reference to the [magistrate judge] useless.*** This duplication of time and effort wastes judicial resources rather than saving them, and runs contrary to the purposes of the Magistrates Act. We would hardly countenance an appellant's brief simply objecting to the district court's determination without explaining the source of the error.

Accord Lockert v. Faulkner, 843 F.2d 1015, 1017-1019 (7th Cir. L988), where the Court held that the appellant, who proceeded *pro se* in the district court, was barred from raising issues on appeal that he did not specifically raise in his objections to the district court:

> Just as a complaint stating only 'I complain' states no claim, an objection stating only "I object" preserves no issue for review.***A district judge should not have to guess what arguments an objecting party depends on when reviewing a [magistrate judge's] report.

See also Branch v. Martin, 886 F.2d 1043, 1046, 1989 U.S. App. LEXIS® 15,084 (8th Cir. 1989) ("no *de novo* review if objections are untimely or general"), which involved a pro se litigant; and Goney v. Clark, 749 F.2d 5, 6 n. 1 (3rd Cir. 1984) (*per curiam*) ("plaintiff's objections lacked the specificity necessary to trigger *de novo* review"). **This notice, hereby, apprises the parties of the consequences of a failure to file specific, written objections.** See Wright v. Collins, supra; and Small v. Secretary of HHS, 892 F.2d 15, 16, 1989 U.S. App. LEXIS® 19,302 (2nd Cir. 1989). Filing by mail pursuant to Fed. R. Civ. P. 5 may be accomplished by mailing objections addressed as follows:

Larry W. Propes, Clerk
United States District Court
Post Office Box 10768
Greenville, South Carolina 29603

APPENDIX E

BIOGRAPHICAL SKETCH
of
Dr. Ceferina Gayo Hess

A native of Dumaguete City, Philippines, Dr. Ceferina Gayo Hess came to the United States in 1968 as an exchange graduate student at Southern Illinois University in Carbondale. She was a recipient of a 4-year teaching assistantship although the first year was devoted to research. After graduation from Southern Illinois University, she joined the faculty of Lander University in Greenwood, South Carolina in 1975. As an associate professor of Political Science, she has taught a total of 18 different political science courses such as American National Government, American Political Theory, The Politics of East Asia and Southeast Asia, International Law, Constitutional Law, Judicial Process, Civil Rights and Civil Liberties, Public Policy, and World Politics. She obtained tenure at Lander in 1978. Since then, she has been her department's "Teacher of the Year" twice and Lander's "Second Best Teacher of the Year" once. Among others, she was listed 4th out of 130 faculty in a Student Government Association (SGA) election for Distinguished Professor, was voted once by Phi Mu as Professor of the Month in 1998, recipient of a "Super Teacher Award" from Gamma Phi Beta in 2000, and the only recipient of an "Award of Excellence" in 2001 out of 14 Fulbrighters who went to India in 1994 from Professor Emeritus/Director Dr. Donald R. Bailey of Francis Marion University in Florence, South Carolina.

Her academic credentials are as follows:

B.A. in Social Sciences, Silliman University, Philippines, Philippines, 1958
LL.B. (Law), Silliman University, Philippines, 1962
M.A. in Government, Southern Illinois University in Carbondale, 1970
Ph.D. in Political Science, Southern Illinois University in Carbondale, 1975
Certificate, Chinese Studies, China Fulbright Program, Beijing Normal University, 1988
Certificate, Japan Studies, San Diego State University (1989) followed by a six-week travel seminar to Japan in 1990 (through the American Association of State Colleges & Universities or AASCU)
Certificate, Indian Studies, India Fulbright Program, Stella Maris College, Madras, India (1994)

She serves as a member of the Board of Directors of the National Social Science Association since 1994. She is a member of the Third World Studies Association since 1995, the Southeast Conference/Association for Asian Studies since 1976, and the South Carolina Political Science and Historical Associations since 1977. She served as a member of the Executive Board of the South Carolina Political Science Association from 1986 to 1988. She has presented and/or published more than 24 papers/articles, 6 encyclopedic essays, and several book reviews on Asian and American politics. She is the recipient of 10 national competitive grants that took her to China, Japan, India, San Francisco, San Diego, Washington, D.C., Chicago, South Bend, Indiana, Jekyl Island, and Atlanta, Georgia allowing her to travel to these places and attend educational seminars and workshops in the field of political science and other areas. Finally, she was instrumental in organizing and/or presenting 113 Fine Arts Lectureship Series (FALS)-approved community programs at

Lander that allowed many students to graduate with 15 hours of FALS credit.

APPENDIX F

Photo taken September 15, 2005. Plaintiff's Husband, Dr. David L. Hess, with 50 Boxes of Documents/Exhibits. (Three plus years of Hard Work on his part.)

Re: Ceferina Gayo Hess vs. Lander University, *et al.* (CA 8:04-cv-01474—GRA); (CA 06-1341)